IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1037 of 2001
with
CIVIL APPLICATION No. 1588 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BK GADHAVI

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 1037 of 2001
MR PARESH UPADHYAY for Petitioner No. 1
MR RV DESAI, AGP for Respondent No. 1-4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/09/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for a direction to the respondent authorities to pay the petitioner pension and retiral dues with interest thereon.

2. At the hearing of the petition today, the learned counsel for the parties state that the pension payment order has already been issued on 15.7.2002 and that thereafter monthly pension is also being paid as per the said pension payment order. The arrears of pension are also paid on 16.7.2002. The controversy now only survives about the interest demanded by the petitioner.

3. Mr RV Desai, learned AGP for the respondents points out that the petitioner was earlier covered by the contributory provident fund scheme and as per the said scheme the petitioner was paid the employer's contribution which was required to be recovered and, therefore, the employer's contribution alongwith interest thereon as per the relevant Government Resolution has been recovered from the petitioner including penal interest at 2.5%. Accordingly, the total amount of employer's provident fund contribution and interest thereon works out to Rs. 2,00,806/-. After adjusting the said amount against the gratuity amount of Rs.2,13,030/-, the balance amount of Rs. 12,124/- has already been paid to the petitioner. It is further submitted that the petitioner cannot claim any interest on the amount of commuted pension which has been worked out at Rs.3,13,625/-. Mr Desai further states that the petitioner had applied for pension for the first time in January, 1998.

4. On the other hand, Mr Paresh Upadhyay, learned counsel for the petitioner submits that since the petitioner has been deprived of his retiral benefits for all these years, even though the petitioner retired on 15.6.1996 and even after filing of this petition in the year 2001, interest should be awarded at the same rate at which the respondents have charged interest while calculating the employer's contribution to the provident fund.

5. Having heard the learned counsel for the parties, it appears to the Court that the rate of interest charged by the respondents for recovering the employer's contribution to the provident fund stands on a different footing. Earlier the petitioner was covered by the Employer's Provident Fund Scheme and the petitioner wanted to switch over to the pension scheme. Hence, the special rate applicable to the employer's contribution to the provident fund scheme cannot necessarily be adopted while calculating interest for the delayed payment of pension. Since the petitioner applied for pension in January, 1998, interest calculations will have to be

worked out from January, 1998 till the date of payment. There is substance in the submission of the learned AGP that commuted pension being accelerated payment of future pension, no interest need be required to be paid for delay in the payment of commuted pension.

6. Accordingly, the respondents shall pay the petitioner interest at 9% p.a. from 1.1.1998 till the date of payment on the arrears of pension paid to the petitioner and also on the differential amount of Rs. 12,124/- which was the difference between the amount of gratuity of Rs.2,13,030/- and the amount of Rs.2,00,860/which was the recovery required to be made by the respondent being employer's contribution to the provident fund with interest thereon.

The interest at the aforesaid rate on the aforesaid amounts shall be paid within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

It is clarified that no interest shall be payable on the amount of commuted pension.

The petition is disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent.

7. Since the main petition is disposed of, the Civil Application does not survive and is accordingly disposed of.

Direct Service is permitted.

(M.S. Shah, J.)
sundar/-